

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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|-----------|---|---|---------------------|
| Applicant | : | Kain et al.   | Group Art Unit 1634 |
| Appl. No. | : | 10/638,173  |                     |
| Filed     | : | August 6, 2003  |                     |
| For       | : | ALTERNATIVE SUBSTRATES<br>AND FORMATS FOR BEAD-<br>BASED ARRAY OF ARRAYS™ |                     |
| Examiner  | : | B.J. Forman   |                     |

## TERMINAL DISCLAIMER UNDER 37 C.F.R. § 1.321(c)

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

*Empowerment of Attorney*

Pursuant to 37 C.F.R. §§ 1.34(b) and 1.321(b) the undersigned attorney of record is empowered to act on behalf of the Assignee, Illumina, Inc. ("Assignee").

*Right of Assignee and Ownership*

In accordance with 37 C.F.R. § 3.73(b), Assignee represents that it is the owner of the entire interest in the above-identified application and co-owned U.S. Patent No. 6,770,441, by virtue of assignments recorded at Reel No. 012272, Frame No. 0287 and Reel No. 012474, Frame No. 0456 by the Assignment Branch of the Patent and Trademark Office. The Assignee represents that, to the best of Assignee's knowledge and belief, title is in the Assignee seeking to take action.

*Disclaimer by Assignee*

Assignee hereby disclaims, except as provided below, the terminal part of any patent granted on the above-referenced application that would extend beyond the expiration date of the full statutory term of U.S. Patent No. 6,770,441, and hereby agrees that any patent so granted on the

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above-identified application shall be enforceable only for and during such period that the instant application and U.S. Patent No. 6,770,441 are co-owned. This agreement extends to any patent granted on the above-referenced application and shall be binding on its successors or assigns.

Assignee does not disclaim any terminal part of any patent granted on the above-referenced application prior to the earlier of the expiration date of the full statutory term of U.S. Patent No. 6,770,441, and that of any patent issuing on the above-identified application in the event that either one later expires for failure to pay a maintenance fee, is held unenforceable, is found invalid, is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. § 1.321(a), has all claims canceled by a reexamination certificate, or is otherwise terminated prior to expiration of its statutory term, except for the separation of legal title stated above.

Applicant also notes that the filing of a terminal disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection. *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870 (Fed. Cir. 1991). The filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting and raises neither presumption nor estoppel on the merits of the rejection.

This Terminal Disclaimer is accompanied by the \$65 fee set forth in 37 C.F.R. § 1.20(d).

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: July 25, 2006

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